

STATEMENT OF PURPOSE

RS19117

This legislation amends the Industrial Special Indemnity Fund ("ISIF") statutes to eliminate the ISIF. The ISIF was created in 1927, for the purpose of encouraging employers to hire employees who have preexisting injuries. Today, other federal laws such as the Americans with Disabilities Act ("ADA") provide more effective resources and tools to achieve this same purpose, making the ISIF less relevant. Further, the ISIF creates continuously increasing unfunded liabilities, and unfairly assesses those employers who have a safe work environment record, as all employers are assessed the same amount.

Section 72-223, Idaho Code, is amended to conform the subrogation rights under the workers compensation law with the law governing recovery of damages in third party civil actions, which allows recovery only for injuries caused by the tortfeasor and excludes compensation for pre-existing conditions.

This legislation also amends Section 72-324, Idaho Code, to allow the ISIF manager to settle claims without having to agree to the elements of ISIF liability, as the ISIF is being wound down during the next two (2) years. This particular amendment addresses issues raised by *Werneke v. St. Maries Joint School District, et. al.*, 147 Idaho 277, 207 P.3d 1008.

This legislation amends Sections 72-327 and 72-328, Idaho Code, to adjust the total annual assessments to employers as the ISIF is wound down, to decrease the total annual assessments over time, and amends language to be consistent with industrial commission statutes.

This legislation also amends Sections 72-332 and 72-334, Idaho Code, to preclude claims to the ISIF for injuries that occur after July 1, 2010, and precludes the filing of claims that occur on or before July 1, 2010 after two (2) years (July 1, 2012).

Elimination of the ISIF will result in the portion of total permanent disability benefits previously paid by the ISIF being paid by the employer and/or the surety last on the risk for the injured worker when the accident occurred. Claims arising after July 1, 2010 will be made directly against the employer. The elimination of the ISIF will not reduce benefits to the injured worker, but does eliminate the duplicative costs and unfunded liability that is created by the ISIF.

FISCAL NOTE

No General Fund impact. The ISIF is funded through assessments to employers. Personnel, administrative and legal defense costs of approximately \$400,000 per year will be eliminated after two (2) years. Accordingly, assessments to employers will decrease as the ISIF is wound down.

Administration estimates that the unfunded liability caused by the ISIF is thirty million dollars (\$30,000,000). The ISIF unfunded liability increases by approximately three and one-half million dollars (\$3,500,000) per year.

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